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12 *Attorneys for Plaintiffs*

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 EMPLOYEE PAINTERS WELFARE TRUST;
 16 PAINTERS VACATION TRUST; PAINTERS
 17 JOINT COMMITTEE; PAINTERS JOINT
 18 APPRENTICESHIP TRAINING COMMITTEE;
 19 PAINTERS INDUSTRY PROMOTION FUND;
 20 PAINTERS JOINT COMMITTEE INDUSTRY
 21 PROMOTION FUND; PAINTERS ORGANIZING
 22 FUND; PAINTERS LABOR MANAGEMENT
 23 COOPERATION COMMITTEE; PAINTERS
 24 SAFETY TRAINING TRUST, each acting by and
 25 through their designated fiduciaries, John Smirk
 26 and/or Thomas Pfundstein; and the
 27 INTERNATIONAL UNION OF PAINTERS AND
 28 ALLIED TRADES INDUSTRY PENSION
 TRUST FUND, acting by and through its
 designated fiduciary, Gary J. Meyers,

Plaintiffs,

vs.

ATLAS PAINTING & DRYWALL, LLC, a
 Nevada limited liability company; ATLAS
 BUILDING & DEVELOPMENT, LLC, a Nevada
 limited liability company; AUDRA MARIE
 TUBIN, individually; KEITH TUBIN, individually;
 ERNEST R. CORTEZ, JR., individually;
 KATHRYN MACK, individually; TRAVELERS
 CASUALTY & SURETY CO. OF AMERICA, a
 foreign corporation qualified to act as surety in the
 State of Nevada; INTERNATIONAL FIDELITY
 INSURANCE COMPANY, a foreign corporation
 qualified to act as surety in the State of Nevada;
 JOHN DOES I-XX, inclusive; and ROE ENTITIES
 I-XX, inclusive,

Defendants.

CASE NO.: 2:09-cv-02208-GMN-PAL

**STIPULATION FOR ENTRY OF
 JUDGMENT BY CONFESSION
 AGAINST ATLAS PAINTING &
 DRYWALL, LLC, ATLAS
 BUILDING & DEVELOPMENT,
 LLC AND KEITH TUBIN, ONLY**

Date: N/A

Time: N/A

CHRISTENSEN JAMES & MARTIN
 7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
 PH: (702) 255-1718 & FAX: (702) 255-0871

1 The Plaintiffs identified above (hereinafter "Plaintiffs" or "Trusts"), acting by and
 2 through their attorneys, Christensen James & Martin, and the Defendants Atlas Painting &
 3 Drywall, LLC, Atlas Building & Development, LLC and Keith Tubin ("Atlas Defendants"),
 4 hereby Stipulate and Agree ("Stipulation") as follows:

5 1. This Stipulation for Entry of Judgment by Confession is entered into by and
 6 between the above-named parties to settle and conclude certain legal disputes relating to the
 7 payment of fringe benefit contributions, liquidated damages, interest, audit costs and attorney's
 8 fees owed to the Plaintiffs by Defendants for the period August 2008 through December 2009.

9 2. A Judgment by Confession shall be entered in favor of the Plaintiffs and against
 10 Atlas and Tubin Defendants for the sum of One Hundred Three Thousand Six Hundred Eighty-
 11 Three and 88/100 Dollars (\$103,683.88).

12 3. This Stipulation is conditioned by certain and specific terms contained within the
 13 Judgment by Confession executed contemporaneously herewith and incorporated herein by this
 14 reference, as though fully set forth hoc verba.

15 CHRISTENSEN JAMES & MARTIN

16 By: Wesley J. Smith
 17 Wesley J. Smith, Esq.
 Attorneys for Plaintiffs

18 Dated: February 4, 2011

ATLAS PAINTING & DRYWALL, LLC

By: K. D. DL
 Its: VP

ATLAS BUILDING & DEVELOPMENT, LLC

By: K. D. DL
 Its: VP

KEITH TUBIN, Individually

K. D. DL
 Keith Tubin

Dated: 2/4, 2011

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13 **UNITED STATES DISTRICT COURT**

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JOHN DOES I-XX, inclusive; and ROE ENTITIES
I-XX, inclusive,

Defendants.

CASE NO.:2:09-cv-02208-GMN-PAL

JUDGMENT BY CONFESSION
AGAINST ATLAS PAINTING &
DRYWALL, LLC, ATLAS
BUILDING & DEVELOPMENT,
LLC AND KEITH TUBIN, ONLY

Date: N/A

Time: N/A

1 Pursuant to the express Stipulation for Entry of Judgment by Confession Against the
2 Atlas and Tubin Defendants ("Stipulation"), it is hereby ORDERED, ADJUDGED AND
3 DECREED that:

4 1. The above-named Plaintiff Trust Funds (hereinafter "Plaintiffs" or "Trusts") shall
5 take Judgment by Confession ("Judgment") against Defendants Atlas Painting & Drywall, LLC,
6 Atlas Building & Development, LLC and Keith Tubin, individually ("Atlas Defendants"), only,
7 for the sum of One Hundred Three Thousand Six Hundred Eighty-Three and 88/100 Dollars
8 (\$103,683.88) ("Judgment Amount"), which sum includes unpaid contributions, pre-judgment
9 interest, liquidated damages, audit costs, court costs and attorney's fees. Interest shall accrue on
10 the Judgment amount at the rate of four percent (4%) per annum.

11 2. The Judgment Amount shall be paid to Plaintiffs as third party beneficiaries under
12 the terms of a written collective bargaining agreement ("Labor Agreement") between Atlas
13 Painting & Drywall, LLC and International Union of Painters and Allied Trades, District Council
14 15, Painters Union Local No. 159. This Judgment includes settlement of all known claims by
15 Plaintiffs for fringe benefit contributions for the August 2008 through December 2009 work
16 months ("Delinquency Period"), plus interest, liquidated damages, attorney's fees and audit costs
17 accrued through November 30, 2010.

18 3. This Judgment is not intended to, and it does not, resolve claims that are as yet
19 unknown to the Trusts, including any claims that may later be revealed by Audit. The Trusts
20 specifically reserve all Audit rights. The Judgment Amount shall be increased to include the
21 amount of any unpaid contributions, liquidated damages, accrued interest, audit costs, court costs
22 and attorney's fees owed to the Plaintiffs by Defendants, either as determined by Audit, or as
23 reported by the Defendants, during any relevant period of the Labor Agreement or during the
24 effective period of any other agreement incorporating Defendants' promise to remit fringe
25 benefit contributions to the Plaintiffs, including this Judgment by Confession.

26 4. The sum of \$50,000.00, including interest on the declining balance thereof and
27 any after-accruing amounts ("Payment Amount"), shall be paid through thirty-six (36) monthly
28

1 installments, due on or before the fifth (5th) day of each month, the first of which is due on
2 March 5, 2011 and the last of which is due on or before February 5, 2014, as follows:

- 3 i. Payments One (1) through Six (6) shall be remitted to the Trusts in
4 the amount of \$500.00 each, commencing on or before March 5,
5 2011 and on the fifth (5th) day of each month thereafter;
- 6 ii. Payments Seven (7) through Twelve (12) shall be remitted to the
7 Trusts in the amount of \$750.00 each, commencing on or before
8 September 5, 2011 and on the fifth (5th) day of each month
9 thereafter;
- 10 iii. Payments Thirteen (13) through Eighteen (18) shall be remitted to
11 the Trusts in the amount of \$1,000.00 each, commencing on or
12 before March 5, 2012 and on the fifth (5th) day of each month
13 thereafter;
- 14 iv. Payments Nineteen (19) through Twenty-Four (24) shall be
15 remitted to the Trusts in the amount of \$1,500.00 each,
16 commencing on or before September 5, 2012 and on the fifth (5th)
17 day of each month thereafter;
- 18 v. Payments Twenty-Five (25) through Thirty (30) shall be remitted
19 to the Trusts in the amount of \$2,000.00 each, commencing on or
20 before March 5, 2013 and on the fifth (5th) day of each month
21 thereafter;
- 22 vi. Payments Thirty-One (31) through Thirty-Three (33) shall be
23 remitted to the Trusts in the amount of \$3,000.00 each,
24 commencing on or before September 5, 2013 and on the fifth (5th)
25 day of each month thereafter;
- 26 viii. Payments Thirty-Four (34) through Thirty-Five (35) shall be
27 remitted to the Trusts in the amount of \$3,500.00 each,
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commencing on or before December 5, 2013 and on the fifth (5th) day of each month thereafter;

ix. Payment Thirty-Six (36) shall be remitted to the Trusts in the amount of \$3,737.00 on or before February 5, 2014.

Subject only to the Atlas Defendants' right to cure under Paragraph 9, the final payment of all unpaid portions of the Payment Amount, in the scheduled amount of \$3,737.00 (which includes interest scheduled to accrue), shall be increased to include any after-accruing attorney's fees incurred by Plaintiffs relating to this Judgment for collection of the amounts referenced herein, and shall be paid by the Atlas Defendants to Plaintiffs on or before February 5, 2014.

5. Upon Plaintiffs' receipt and negotiation of payment of the entire Payment Amount, the remaining Judgment Amount in the sum of Fifty Three Thousand Six Hundred Eighty-Three and 88/100 Dollars (\$53,683.88), plus the interest accrued thereon, shall be waived ("Waiver"). Upon the Atlas Defendants' failure to remit all payments required by this Judgment in a timely manner, the Waiver shall be deemed revoked and the Atlas Defendants shall be obligated to pay to the Trusts all such remaining Judgment Amount, plus interest accrued thereon at the rate of 4% per annum from the date of this Judgment.

6. The payments toward the Judgment Amount required herein shall be made payable to "Painters Trust Funds" and shall be remitted to Plaintiffs' attorney, Christensen James & Martin, at 7440 W. Sahara Ave., Las Vegas, NV 89117, or at such other location as the Atlas Defendants are notified in writing. Should any of the Atlas Defendants' payments be returned for insufficient funds, all subsequent payments shall be made using cashier's checks or money orders.

7. In addition to paying the Judgment Amount as required by the foregoing terms, the Atlas Defendants shall timely pay all contributions that fall due while any portion of the Judgment Amount remains unpaid (i.e., for hours worked by the Atlas Defendants' covered employees while the Judgment Amount is being paid). The Atlas Defendants shall remit a monthly report to the Trusts listing hours worked by their covered employees, and shall submit a

1 check to the Trusts to pay contributions owed for such hours. The reports and payments shall be
2 delivered to the Plaintiffs or their designee(s) on or before the 15th day of the month following
3 the calendar month in which the covered hours of work listed on the reports are performed.

4 8. The following potential claims are reserved by the Trusts: (i) any claims unrelated
5 to the Judgment Amount, accruing before or after the effective date of this Judgment, including,
6 without limitation, claims by any of the Trusts for additional contributions and related damages
7 that may be due and owing to any of the Trusts pursuant to the provisions of any collective
8 bargaining agreement to which Atlas Defendants may be bound that requires the payment of
9 contributions to the Trusts; (ii) the obligation of the Atlas Defendants or any trade or business
10 under common control of the Atlas Defendants (to the extent the Atlas Defendants or any trade
11 or business under common control with the Atlas Defendants has any obligation) to pay, and the
12 rights of the Trusts to assess and collect, withdrawal liability pursuant to 29 USC § 1381 et. seq.
13 (including the use of the Atlas Defendants' contribution history for purposes of calculating any
14 withdrawal liability); and (iii) any additional claims discovered by audit for any period.

15 9. The Atlas Defendants shall have the right at any time to prepay the entire balance
16 owed, or any portion thereof, without incurring a prepayment penalty. However, if the Atlas
17 Defendants make early payments, the interest accruing on the declining Judgment Amount
18 balance (which is already included in the payment amounts required hereunder) shall not be
19 recalculated in the Atlas Defendants' favor.

20 10. Should the Atlas Defendants fail to satisfy any of the conditions in this Judgment,
21 a written Notice of Default shall immediately be delivered to: Keith Tubin, 3125 West Ali Baba,
22 Suite 704, Las Vegas, NV 89118. If the Atlas Defendants thereafter fail to make the required
23 payment(s) or otherwise fail to comply with the conditions of such paragraphs within ten (10)
24 days of the date of such Notice, Plaintiffs shall have the unconditional and immediate right to file
25 and execute upon the Judgment for whatever amount then remains due and owing, including
26 after-accruing attorney's fees, without further notice to the Atlas Defendants or Order from the
27 Court.
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1 11. During the period that the Atlas Defendants timely make the required payments
2 and faithfully perform under this Judgment, the Plaintiffs shall stay claims against Bond No.
3 105068408 issued to Atlas Building & Development, LLC by Travelers Casualty & Surety
4 Company of America ("Bond"). In the event of default, as described above in Paragraph 9,
5 Plaintiffs shall have the unconditional and immediate right to collect the proceeds of the Bond
6 for whatever amount then remains due and owing, including after-accruing attorney's fees,
7 without further notice to the Atlas Defendants or Order from the Court.

8 12. Filing of the Stipulation and this Judgment and execution upon the same shall be
9 stayed through February 5, 2014, provided that payment in full is made by the Atlas Defendants
10 in accordance with the terms of this Judgment.

11 13. Upon Plaintiffs' receipt and negotiation of the payments required under this
12 Judgment, this obligation will have been satisfied and, upon receipt of a request therefor,
13 Plaintiffs shall deliver to the Atlas Defendants a written Release and Satisfaction of Claims.
14 Plaintiffs' Release and Satisfaction of Claims in favor of the Atlas Defendants shall not be
15 executed nor delivered until all of the Atlas Defendants' obligations under this Judgment have
16 been fully performed.

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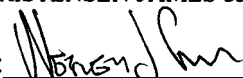
1 14. The Atlas Defendants have consulted the attorney of their choice and fully
2 understand the obligations and consequences of this Judgment.

3 DATED and DONE this 21st day of March, 2011.

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5 
6 Gloria M. Navarro
7 United States District Judge

8 Approved and Submitted by:

9 CHRISTENSEN JAMES & MARTIN

10 By: 
11 Wesley J. Smith, Esq.
12 Attorneys for Plaintiffs

13 Dated: February 4, 2011

Approved as to Form and Content:

ATLAS PAINTING & DRYWALL, LLC

By: K. D. DL
Its: V.P.

ATLAS BUILDING & DEVELOPMENT, LLC

By: K. D. DL
Its: V.P.

KEITH TUBIN, Individually

17 K. D. DL
18 Keith Tubin

19 Dated: 2/4, 2011

OATH AND VERIFICATION

STATE OF NEVADA)
: ss.
COUNTY OF CLARK)

Keith Tubin, as VP of Atlas Painting & Drywall,
LLC and Atlas Building & Development, LLC, being first duly sworn upon oath, now verifies
and declares that:

1. Entry of this Judgment by Confession, according to its provisions, is duly
authorized; and

2. The monies due and owing and the basis for said Judgment are accurately set
forth in the Stipulation and this Judgment.

Further you affiant sayeth naught.

Keith Tubin K.D.N.
as VP of Atlas Painting & Drywall,
LLC and Atlas Building & Development, LLC

Subscribed and Sworn before me
this 7 day of February, 2011.

N. Larson
Notary Public

